IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 19, 2009

STATE OF TENNESSEE v. MARVIN CRAWFORD

Appeal from the Criminal Court for Sullivan County
No. S52,301 Robert H. Montgomery, Jr., Judge

No. E2008-01943-CCA-R3-CD - Filed July 8, 2009

A Sullivan County Criminal Court jury convicted the defendant, Marvin Crawford, of eight counts of rape of a child, *see* T.C.A. § 39-13-522 (2003), and the trial court imposed an effective sentence of 75 years' incarceration. In this appeal, the defendant contends that the evidence was insufficient to support his convictions and that the trial court erred by imposing partially consecutive sentencing. Discerning no error, we affirm the judgments of the trial court.

Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Richard A. Tate, Assistant District Public Defender, for the appellant, Marvin Crawford.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Amber Massengill, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant's convictions relate to the sexual abuse he perpetrated against the victim, 12-year-old B.M., between May 2004 and October 2004.[1] At trial, B.M., who testified that she was born on December 18, 1991, stated that in May 2004 her mother took her and two of her five brothers to live with the defendant and his wife, Teresa, after her "brother's dad kicked [them] out." Shortly after they moved in with the defendant, B.M.'s mother was sent to jail.

B.M. testified that "a couple of days after" her mother went to jail, she and the defendant were watching television together in the defendant's bedroom when the defendant "called [her] up on the bed so [she] . . . got under the covers and he took off his pants and then took off [her pants] and had oral sex with [her]." She elaborated, "He put his mouth on my vagina." According

[1] As is the policy of this court, we refer to the minor victim by her initials.

to B.M., the defendant then "forced [her] to put [her] mouth on his penis." Finally, the defendant "put his penis in [her] vagina."

On the following afternoon, the victim was again in the defendant's bedroom watching television when he "called" her onto the bed and performed oral sex on her. She stated, "[H]e took off my clothes, put his mouth on my vagina and then forced me to put mine on his [penis]." The victim testified that after the defendant forced her to perform fellatio on him, he penetrated her vaginally with his penis.

The victim testified that "a couple of days before Halloween" in 2004, she was lying on her bed when the defendant "called [her] into his room." The defendant then "went to the bathroom and he came back and shut and locked the door." At that point, the two "had oral sex." She explained, "He put his mouth on my vagina and he forced me to put my mouth on his penis." The defendant also penetrated both her vagina and her anus with his penis.

B.M. testified that when a Department of Children's Services ("DCS") caseworker initially asked her about the incidents involving the defendant, B.M. "told her a lie" because she "didn't want [the defendant] to go anywhere because he was like my mama's best friend."

During cross-examination, B.M. stated that two of the defendant's sons, Jessie and Mark, lived at the defendant's residence "on and off" while B.M. and her brothers lived there. She testified that she did not experience any bleeding following any of the incidents. B.M. stated that she told her sister about the abuse and was then contacted by a DCS case worker.

Kingsport Police Department Detective Melanie Adkins testified that in June 2005 she received information that led her to schedule an interview with B.M. at the DCS office. During that interview, B.M. told Detective Adkins "[t]hat she had engaged in sexual activity with" the defendant at his residence at 921 Robertson Street in Kingsport. Detective Adkins stated that B.M.'s mother was incarcerated on May 18, 2004, and remained incarcerated until the end of the year. She testified that B.M. and her brothers remained at the defendant's residence following her mother's incarceration until they were removed by DCS workers on November 8, 2004. B.M. went into foster care and "was placed with some relatives of her mother."

As a result of her interview with B.M., Detective Adkins scheduled an interview with the defendant. Detective Adkins testified that she began the interview by reading the defendant his *Miranda* rights and by explaining to him that "this was voluntarily [sic], that he could leave at any time, he did not have to be there." The defendant signed a waiver of rights form, and Detective Adkins "explained to him exactly what the allegations were, what he was being accused of." Detective Adkins testified that the defendant's "initial reaction was denial, that it had not happened." However, after the detective "got more involved into giving him details," the defendant "began to sweat and he became very agitated and said that he thought he might be having a heart attack." Detective Adkins stated that she offered to call for medical attention and that she reminded the defendant he was free to leave "at any time."

According to Detective Adkins, the defendant "didn't want to leave," and after a few minutes, "he started changing the subject . . . and . . . started telling [Detective Adkins] that he had erectile dysfunction, that he was unable to have sex with his wife." Detective Adkins recalled the defendant's asking, "How could I have sex with [B.M.] if I can't have sex with my own wife[?]" Shortly thereafter, the defendant admitted, "Well, it happened one time but that's all." Detective Adkins stated that after she asked the defendant to "'specify what it is,'" the defendant "started getting nervous again and . . . he told [her] that [B.M.] was very promiscuous and that she had come on to him and that he had turned her down and . . . she had hounded him so much that he gave into her." At that point, the defendant said, "'I'm having a heart attack. I need to go.'" He then "jumped up and started out of the building." He told Detective Adkins that he would speak to her later.

Detective Adkins testified that she telephoned and visited the defendant's residence on several occasions but "could not get an answer at the door . . . could not get an answer on the phone." The defendant finally contacted her on April 18, 2006, and told her "that he was willing to talk but just didn't want to do it on that day." She stated that she scheduled an interview for that Friday but because the defendant "just did not sound believable," she asked the dispatcher to "run the number through 911 to see that it was coming from that Robertson Street address." She then obtained an arrest warrant and went to the defendant's residence. The defendant's wife initially stated that he was not there, but after Detective Adkins stated that she had just spoken with the defendant, Ms. Crawford allowed them inside to search for him. They found him hiding "in a back bedroom" and placed him under arrest.

Detective Adkins stated that upon his arrival at the justice center, the defendant refused "to sign anything written" but told her "that everything he had said previously was true and that he was sorry about having sex with [B.M.]." Detective Adkins "told him that without him signing a waiver of his rights[,] [she] did not want to discuss the case with him." The defendant nevertheless "continued to make statements that [B.M.] was very promiscuous and she had initiated these things."

During cross-examination, Detective Adkins acknowledged that following "an initial referral" in January 2005, the victim did not "divulge[] any sex abuse." Later, on June 10, 2005, she received a new referral, and during an interview following that referral, the victim stated she had not been honest before because she was scared. The victim told Detective Adkins that intercourse with the defendant "was more of a discomfort rather than painful" despite that the victim had not engaged in intercourse before. Detective Adkins conceded that although this revelation "created some doubts as far as really what had transpired prior to that with other people," she did not doubt the veracity of the victim's claims against the defendant.

The 52-year-old defendant testified that the victim, her mother, and her two brothers moved into the residence he shared with his wife, his two sons, his son's fianceé, and his two grandchildren. The defendant stated that the victim's mother was "in and out" of jail during the time that the victim resided with him. He denied having any sexual contact with the victim during that time. The defendant testified that he became ill during his first interview with Detective Adkins, explaining, "After the allegations was [sic] spoken and stuff I got upset because I knowed [sic] it was

a lie and stuff and I been through it once in life and I just went to pieces and stuff." He denied telling Detective Adkins that he had had sexual intercourse with the victim on one occasion.

During cross-examination by the State, the defendant again denied having sexual contact with the victim or admitting the same to Detective Adkins. He added that he could not recall parts of his conversation with the detective because he has "short term memory loss." The defendant then stated that he remembered "blacking out" when discussing the victim's allegations.

Ronnie Crawford, the defendant's first cousin, stated that he lived with the defendant during the summer of 2004. He testified that he never saw the defendant and the victim in the bed together and did not observe any sexual contact between the two. Mr. Crawford admitted during cross-examination, however, that there were times when the defendant and the victim were at the residence while he was at work.

Mark Crawford, the defendant's son, testified that he lived with the defendant during the month of May 2004 and that he also worked with his father during this time. He stated that during that period of time, he never observed any sexual activity between the defendant and the victim. During cross-examination, he admitted that there were times when the defendant and the victim were at the residence while he was not.

Andrew Crawford, the defendant's other son, testified that he lived with the defendant for "[a]bout a month and a half, two months" following his March 2004 split with his girlfriend. He stated that even after he moved out of the residence, he "was down there every day with" the defendant. He stated that he did not observe any sexual activity between the victim and the defendant.

During cross-examination, he admitted that his brother lived at the two-bedroom residence "before or after" he moved out. He also conceded that he was "not there at the residence 24 hours a day."

At the conclusion of the trial, the jury convicted the defendant as charged of eight counts of rape of a child. The trial court denied the defendant's timely motion for new trial on August 1, 2008, and the defendant filed a timely notice of appeal on August 27, 2008.

In this appeal, the defendant contends that the evidence was insufficient to support his convictions and that the trial court erred by imposing partially consecutive sentencing.

I. Sufficiency of the Evidence

The defendant asserts that the evidence is insufficient to support his convictions because the defendant "testified that he did not place his penis in [the victim's] vagina, mouth, or anus at any time" and because each of the defense witnesses denied observing any sexual contact

between the defendant and the victim. The State contends that the evidence was sufficient. We agree with the State.

We review the defendant's claim mindful that our standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

When examining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

"Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is less than thirteen (13) years of age." T.C.A. § 39-13-522(a) (2003). "'Sexual penetration' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required." *Id.* § 39-13-501(7).

B.M. testified that on two separate occasions the defendant sexually assaulted her, performing cunnilingus on her, forcing her to perform fellatio on him, and penetrating her vaginally with his penis. She stated that on a third occasion the defendant again performed cunnilingus on her, forced her to perform fellatio on him, penetrated her vaginally with his penis, and penetrated her anally with his penis. Finally, she testified that she was a 12-year-old fifth grader when the abuse occurred. The defendant admitted at least some of the abuse to Detective Adkins. The jury, as was its prerogative, rejected the defendant's denial and found that he had raped the victim as she claimed. The evidence adduced at trial fully supports that verdict.

II. Sentencing

The defendant contends that the trial court erred by ordering partially consecutive service of the sentences because "the nature and scope of the sexual acts were not aggravated beyond what is inherent in the nature of the crime itself." The State argues that the 75-year effective sentence was justified. We agree with the State.

When there is a challenge to the length of a sentence, it is the duty of this court to conduct a de novo review of the record with a presumption that the determinations made by the trial court are correct. T.C.A. § 40-35-401(d) (2006). This presumption is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the appellant. *Id.* In the event the record fails to demonstrate the required consideration by the trial court, review of the sentence is purely de novo. *Id.* If appellate review, however, reflects that the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, "even if we would have preferred a different result." *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

The mechanics of arriving at an appropriate sentence are spelled out in the Criminal Sentencing Reform Act of 1989. At the conclusion of the sentencing hearing, the trial court determines the range of sentence and then determines the specific sentence and the propriety of sentencing alternatives by considering (1) the evidence, if any, received at the trial and the sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information offered by the parties on the enhancement and mitigating factors, (6) any statements the defendant wishes to make in the defendant's behalf about sentencing, and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-210(a), (b); -103(5); *State v. Holland*, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

Tennessee Code Annotated section 40-35-115(b) enumerates factual bases which authorize consecutive sentencing. In the present case, the consecutive sentencing factor upon which the trial court relied is as follows:

> The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of the defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims[.]

T.C.A. § 40-35-115(b)(5). In the absence of this or some other authorizing factor, state law requires the imposition of concurrent sentencing. *Id.* § 40-35-115(d).

At the sentencing hearing, Detective Adkins testified that the defendant occupied a position of trust because the victim and her siblings had been placed in his care during her mother's incarceration.

Sue Frazier-Bear, a therapist with the Children's Advocacy Center who treated the victim following the abuse, testified that the victim experienced "depression and post-traumatic stress" and "was almost borderline psychotic" and "suicidal." Ms. Frazier-Bear stated that as a result

of the abuse, it had been "really difficult for her in foster placement to trust the adults around her." She elaborated, "She had problems at school. She had problems with her foster parents. She was oppositional and that, too, is symptomatic of sexual abuse, lack of trust, control." Ms. Frazier-Bear testified that "research shows that children who have been sexually abused are more prone to mental illness, more prone to oppositional behaviors, more prone to substance abuse than other children."

During cross-examination, Ms. Frazier-Bear stated that she had attributed the victim's depression to the sexual abuse because it "came after . . . she realized what had happened and after she disclosed what had happened." She agreed that the victim's mother's incarceration would have "exacerbated the main issue."

Following this testimony and the defendant's filing a waiver of his ex post facto protections,[2] the trial court imposed sentences of 25 years, the maximum within the range, for each conviction of rape of a child. The court concluded that the defendant's previous history of criminal convictions, the particular vulnerability of the victim due to her age, the exaggerated nature of the victim's psychological injuries, the fact that the defendant committed the offense for sexual gratification, and the defendant's abuse of a position of private trust justified the 25-year sentence on each count. *See* T.C.A. § 40-35-114(1), (4), (6), (7), and (14) (2006).

The trial court grouped the convictions into three "incidents" and ordered that the sentences within each incident be served concurrently with each other and consecutively to the sentences imposed for the other incidents. The effective sentence is, therefore, 75 years. In support of its consecutive sentencing order, the trial court found that the defendant was "convicted of two or more statutory offenses involving sexual abuse of a minor." The court also found that the victim "basically had no place else to turn" when the defendant took her and her brothers into his home, that the sexual abuse went undetected for "a period of some five months while the child was there at the house," and that the sexual abuse "involved basically . . . a degrading type behavior on the part of the defendant over the victim." In addition, the court found "as an aggravating factor there is both residual as well as mental damage to her and that it . . . will continue to affect her personal mental well[-]being as well as dealing with her relationship with other people." The trial court placed particular emphasis on the defendant's previous conviction of a sex crime involving a minor and concluded that an extended sentence was necessary to protect the public against further criminal acts by the defendant. Finally, the court determined that consecutive sentencing related to the severity of the offenses because the victim was "robbed of her childhood."

The record clearly supports the findings of the trial court. The 12-year-old victim, already in a vulnerable position due to her mother's incarceration, was placed in the custody and care of the defendant, a man the victim referred to as her mother's "best friend." The defendant chose to prey on the victim at a time when she was dependent upon the mercy of him and his wife for shelter and other life necessities. The abuse began only days after the victim's mother was incarcerated and continued undetected for a period of five months. The record establishes that the victim initially refused to reveal the abuse not because she feared for her own safety or well-being,

[2]The defendant filed the waiver to obtain sentencing under the 2005 amendments to the 1989 Sentencing Act.

but because she did not want the defendant to get into trouble. Ms. Frazier-Bear testified that the victim suffered depression and post-traumatic stress disorder as a result of the abuse and that the victim had thoughts of suicide as a way to escape. The egregious nature of the sexual acts, which each involved the defendant's undressing the victim, his performing oral sex on the victim before culminating in penile-vaginal penetration, and the one incident of penile-anal penetration, also support the imposition of consecutive sentences in this case. We will not disturb the sentencing decision of the trial court.

III. Conclusion

Based on the foregoing analysis, the judgments of the trial court are affirmed.

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JAMES CURWOOD WITT, JR., JUDGE